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d/b/a Ezaki Glico Co., Ltd. and Ezaki Glico USA Corp.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EZAKI GLICO KABUSHIKI KAISHA, d/b/a	:	
EZAKI GLICO CO., LTD., and	:	Civil Action No. 15-5477-MCA-LDW
EZAKI GLICO USA CORPORATION,	:	
	:	District Judge Madeline Cox Arleo
Plaintiffs,	:	Magistrate Judge Leda Dunn Wettre
	:	
v.	:	
	:	Return Date: November 5, 2018
LOTTE INTERNATIONAL AMERICA CORP.,	:	Time: 10:00 a.m.
and LOTTE CONFECTIONARY CO. LTD.,	:	
	:	ORAL ARGUMENT REQUESTED
Defendants.	:	

PLAINTIFFS' EVIDENTIARY OBJECTIONS IN REPLY TO
DEFENDANTS' OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

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Plaintiffs Ezaki Glico Kabushiki Kaisha, d/b/a Ezaki Glico Co., Ltd. and Ezaki Glico USA Corp. (“Plaintiffs” or “Glico”) submit these additional evidentiary objections to certain items of purported “evidence” cited by Defendants Lotte Confectionary Co. Ltd. and Lotte International America Corp. (“Defendants” or “Lotte”) in their “Opposition to Plaintiffs’ Partial Motion for Summary Judgment on Defendants’ Affirmative Defenses of Prior User and Fraud” (Dkt. No. 257), and in their Responsive Statement of Disputed Facts and Supplemental Statement of Undisputed Material Facts (Dkt. No. 257-1).

Summary judgment is appropriate if “the moving party has shown that the evidentiary material on the record, *if reduced to admissible evidence*, is insufficient to permit the nonmoving party to carry its burden of proof, and there are no disputes as to issues of material fact.” *Palan v. Inovio Pharm. Inc.*, 653 F. App'x 97, 99–100 (3d Cir. 2016) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)) (emphasis added). Further, affidavits and declarations considered on summary judgment must “set out facts that would be admissible in evidence.” Fed. R. Civ. P. 56(c)(4). Glico objects to the specific items listed herein, submitted in support of Lotte’s Opposition brief (Dkt. No. 257) and accompanying filings, on the grounds that they cannot be presented in a form that would be admissible in evidence. Fed. R. Civ. P. 56(c)(2).

Glico respectfully requests the Court to exclude Lotte’s inadmissible evidence from consideration when deciding Glico’s motion. Fed. R. Civ. P. 56(e)(4).

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Source	Citations	Basis for Objection	Objection Details	Court's Decision
Hallerman Exhibit 53 EZAKI0184924 (Dkt. 229-53)	Dkt. 257-1, Lotte's Responsive Statement of Disputed Facts, ¹ ¶¶ 46, 48, 49, 73, 79, 81, 88, 89, 90, 91; Dkt. 257-1, Lotte's Supplemental SUMF, ¶¶ 4, 6, 7; Dkt. 257, Lotte's Opp. to Glico's MSJ pp. 5, 8.	Fed. R. Evid. 602, 802, 803, 805	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] Dkt. 227-1, ¶ 70; Dkt. 227-36; <i>Langbord v. U.S. Dep't of Treasury</i>, 832 F.3d 170, 191 (3d Cir. 2016), 137 S. Ct. 1578(2017)(noting that while a document might be admissible under FRE 803(16), that does not necessarily justify admitting hearsay statements contained therein because “there is no guarantee that a hearsay statement contained in the ancient document is accurate” and “stronger precedent supports the application of Rule 805 [hearsay within hearsay] to ancient documents”); Fed. R. Evid. 803, Notes of Advisory Committee on Proposed Rules (2014)(“In a hearsay situation, the declarant is, of course, a witness, and neither this rule nor Rule 804 dispenses with the requirement of firsthand knowledge”).</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

¹ Dkt. 257-1 refers to Defendants' Responsive Statement of Disputed Facts and Supplemental Statement of Undisputed Material Facts.

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Source	Citations	Basis for Objection	Objection Details	Court's Decision
Hallerman Exhibit 73 LOTTE00001716–19. (Dkt. 229-73)	Dkt. 257-1, Lotte's Responsive Statement of Disputed Facts, ¶ 45; Dkt. 257-1, Lotte's Supplemental SUMF, ¶ 11	Fed. R. Evid. 901	Lotte cannot authenticate this picture, which purportedly shows packages of Pepero in the Original, Almond, White Cookie, and Nude varieties. There is nothing to indicate the origin of this photograph or the sourcing of what it depicts.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Expert Report of Leon Levine (Dkt. 229-5)	Dkt. 257-1, Lotte's Responsive Statement of Disputed Facts, ¶ 45	Fed. R. Evid. 802	Lotte cites the Expert Report of Leon Levine, ¶¶ 61–62, [REDACTED] Expert reports are inadmissible hearsay.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

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Dated: November 8, 2018

Respectfully submitted,
/s/ Roy H. Wepner

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